

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Consumer Information and Disclosure)	CG Docket No. 09-158
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170
)	
IP-Enabled Services)	WC Docket No. 04-36

**COMMENTS OF THE
DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION**

The District of Columbia Public Service Commission (“DC PSC”) hereby submits these comments in response to the August 28, 2009 Notice of Inquiry in the above-captioned proceeding.¹ In the Notice, the Federal Communications Commission (“FCC” or “Commission”) seeks to examine whether there are opportunities to protect and empower consumers by ensuring sufficient access to relevant information about communications services. The DC PSC is pleased to provide its views. We support the Commission’s efforts and recommend the creation of a Federal/State Joint Task Force on Consumer Protection that will take advantage of the expertise of state public service commissions in consumer affairs matters. We also provide specific comment in selected areas.

I. BACKGROUND

Over a decade ago, the Commission first adopted rules designed to assure that consumers have easy-to-read and easy-to-understand bills.² At first, Commercial Mobile

¹ *Consumer Information and Disclosure, Truth-in-Billing and Billing Format, IP-Enabled Services*, Notice of Inquiry, FCC 09-68, August 28, 2009 (“Notice”).

² *See Truth-in-Billing and Billing Format*, First Report and Order, 14 FCC Rcd 7492 (1999) (“First Truth-in-Billing Order”).

Radio Service (“CMRS”) providers were exempted because the rules were either deemed inapplicable or unnecessary in the CMRS context.³ More recently, in 2005, the Commission adopted the *Second Truth-in-Billing Order* and applied certain of the Commission’s requirements to CMRS providers.⁴ In general, the imposition of these consumer protections has been successful. Consumers have access to more information, in a more comprehensible format.

In the *Notice*, the Commission considers whether there are additional opportunities to protect and empower American consumers by ensuring sufficient access to information about communications services. The Commission believes that changes in the communications marketplace in the decade since it adopted its Truth-in-Billing rules may have benefitted consumers in many ways, but “have also generated a great deal of new information for consumers to digest and have created new sources of uncertainty and confusion.”⁵ Therefore, the Commission seeks comment on how to provide consumers with better access to the clear, understandable information they need throughout the four steps of the communications process: choosing a provider, choosing a service plan, managing use of the service plan and deciding whether and when to switch an existing provider or plan.⁶ The Commission asks for comment on what services should be addressed, and what information should be provided at each stage of the communications process. The Commission also asks for comment on related issues, such as the formatting and display of consumer information, technological tools that may be helpful, dispute resolution, disability issues and consumer education.

II. DISCUSSION

A. Our Consumer Experience

³ Id. at 7501-02.

⁴ *Truth-in-Billing and Billing Format*, Second Report and Order, 20 FCC Rcd 6448 (2005) (“Second Truth-in-Billing Order”).

⁵ *Notice* at ¶ 3.

⁶ Id. at ¶ 16.

The Mission Statement of the DC PSC has seven principles, two of which speak directly to our responsibility to our consumers:

- Protecting consumers by ensuring safe, reliable and quality utility services
- Educating utility consumers and informing the public.

Like most state commissions, the DC PSC enjoys a close proximity to consumer concerns. We mediate disputes between customers and utilities, we conduct formal and informal consumer complaint proceedings and we make ourselves available at community hearings and other events to address consumers directly.⁷ We anticipate and welcome consumers coming directly to us on a “walk-in” basis to discuss their concerns. Indeed, local residents feeling aggrieved by their utility turn to their local public service commission. For that reason, state commissions view consumer protection as one of their core public interest principles and focus much of their attention and expertise on these issues.

In the District of Columbia, we have established an Office of Consumer Services (“OCS”) which answers consumer inquiries, assists in informal resolution of complaints and disputes and refers to the DC PSC for adjudication any complaints that cannot be resolved informally. The experience of OCS may be helpful to the Commission in understanding the concerns that consumers have regarding their telecommunications services. Our most recent data confirms that billing and payment issues raise the greatest number of complaints. For the first 3 quarters of fiscal 2009, 56.4% of the ILEC complaints we received related to billing issues, as did 59.6% of the CLEC complaints we received. This should be compared with the 30.6% of complaints about ILEC quality of service and 28% of complaints about CLEC quality of service.⁸ This experience leads

⁷ For example, in connection with an upcoming utility rate case, the DC PSC will conduct three open hearings in various locations around the District for the purpose of informing the public and soliciting consumer input. See www.dcpsc.org/pdf-files/hot-topics/Community-Hearings-FC1076.pdf.

⁸ Public Service Commission Fiscal 2009 Consumer Complaints and Inquiries Reports, March 25, 2009, June 1, 2009 and September 1, 2009.

us to the view that billing continues to be an area of concern for consumers, even a decade after the truth-in-billing requirements went into effect.⁹

It also bears noting that the DC PSC recently adopted a new Consumer Bill of Rights (“CBOR”) that includes, not only a description of information that must be revealed on every telecommunications provider’s bill, but also customer protection standards.¹⁰ The original CBOR was enacted over twenty-five years ago, but needed updating as a result of the influx of new carriers and the emergence of competition. To insure public input, the DC PSC established a CBOR working group composed of representatives of the Office of People’s Counsel, Advisory Neighborhood Commissions, civic associations, the utility companies and their competitors and the Commission. The process resulted in standards for residential customers that require that information contained in bills include contact information for both the DC PSC and the Office of People’s Counsel, that customer information be protected from unauthorized disclosure, and that advertising be clear, accurate and supportable, including the rate for services offered and any material term or condition.¹¹ We hope that as we have an opportunity to enforce these requirements, the consumer experience in the District will continue to improve.¹²

B. Our Views on the Notice

1. A Federal/State Partnership

The Notice asks for comment on a number of important questions. The DC PSC first notes, as a general matter, that concern for the telecommunications consumer is shared between the FCC and state public service commissions, like the DC PSC. Indeed,

⁹ We note that the District of Columbia Public Service Commission does not have jurisdiction over the terms and conditions offered by CMRS providers. Therefore, when consumers call to complain or inquire about wireless service, we refer them to the FCC or to the relevant carrier. We do not keep statistics on the number of consumer complaints relating to wireless, but there are more than a few received every month.

¹⁰ See 15 DCMR § 300 et seq., 55 DC Reg. 008058, July 25 2008. These new rules went into effect on September 25, 2009.

¹¹ See 15 DCMR § 328.

¹² A copy of the DC Consumer Bill of Rights is available at www.dcpsc.org/commorders/consumerbill/consumerbill.shtm.

as was noted in a Resolution adopted by the National Association of Regulatory Utility Commissioners (“NARUC”) in 2008, “state utility commissions have proven to be valuable partners to the Federal Communications Commission as the ‘laboratories of democracy’ for ensuring consumer rights in a timely manner.”¹³ In addition to enforcing federal consumer protection policies, states have established their own protections and have worked with consumers directly to assure that their concerns are being met. The DC PSC agrees with NARUC that a state and federal partnership, together with uniform national standards, would give consumers throughout the Nation a clear and consistent set of enforceable consumer rights that they may not have today.¹⁴ We therefore recommend that the Commission establish a Federal/State Joint Task Force on Consumer Protection, similar to that proposed by the *NARUC Resolution*, which would work collaboratively with the Commission on a set of national consumer protection standards. The Task Force should include FCC Commissioners, state commissioners, industry representatives, consumer advocates and representatives of state attorneys general. Establishing the Task Force is a productive way to take advantage of the “on-the-ground” expertise that state commissions have in consumer protection issues.

2. Services

As the Commission recognizes, the current truth-in-billing requirements apply only to wireline and wireless services. Other services are emerging that are or will be substitutes for these traditional services. The Commission asks whether its consumer information requirements should be applied to those new services, such as VoIP and broadband Internet access services, as well as to subscription video and satellite television services. As a general matter, we believe that consumer information requirements are important and do not impose a burden on providers of any telecommunications or information service that is not outweighed by the value of the governmental interest in protecting the consumer.¹⁵ There may be individual exceptions

¹³ *Resolution Concerning the Communications Policy Statement*, adopted by the NARUC Board of Directors, July 23, 2008, at 1 (“*NARUC Resolution*”) (copy attached).

¹⁴ *NARUC Resolution* at 2.

¹⁵ This is consistent with *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557 (1980). There the Supreme Court established a test for determining when

to that rule, but we expect other commenters to identify reasons why any particular service should be exempted from the requirements. We look forward to addressing their arguments in Reply Comments.

We note that there may not be a very well developed record to support the imposition of truth-in-billing and other requirements on VoIP and broadband Internet access services because these services are relatively new and abuses are not well documented. It is also true that in some states, like in the District of Columbia, the public service commission may not have jurisdiction over these services and may not have in place procedures to address consumer complaints and inquiries about these services. If the Commission decides that it should establish certain consumer information requirements for these nascent services, it should begin to build the record needed in this proceeding.

3. Information Needed

In our view, one of the critical aspects of the Notice is its recognition that consumers need information at every step of the communications process, not just at the beginning. Of course, choosing a service provider is important, but it is not the only decision made by modern consumers. One no longer just chooses a service provider, one chooses a many-faceted plan, and one chooses equipment. Often, these choices are bewildering to anyone other than the very most sophisticated customer. We urge the Commission to develop a method of helping consumers compare their options. To do so, it would be necessary to have a standard outline for each service that would require a provider to show not only price per unit (minutes or messages, e.g.), but other factors such as geographic coverage, speed of throughput, and service quality indicia, depending on the particular qualities of the service.¹⁶ For example, broadband data service

commercial speech is protected by the First Amendment from unwarranted government regulation. That test has four parts. First, the commercial speech must concern lawful activity and must not be misleading. Second, it must be determined whether the governmental interest to be served is substantial. Third, if both answers are yes, then it must be decided whether the regulation directly advances the governmental interest asserted and, fourth, whether it is not more extensive than necessary to serve that interest. This test can not be conducted in the absence of a specific proposal for regulation, as well as a better understanding of the need for additional consumer information requirements. Presumably, a future Notice of Proposed Rulemaking in this docket will address those questions.

¹⁶ A “Schumer Box” could be the template for the information required to be disclosed in each service, including requirements for font size and clarity.

providers should be required to state *actual* upload and download speeds under different circumstances.

It is also important for consumers to be fully acquainted with all the requirements the service provider imposes. So, for example, a consumer should be made aware in advance of any penalty for canceling or modifying a plan. We believe that in most cases, such disclosure is made, but we are concerned that it is “hidden” in incomprehensible legalese or buried in the finest of fine print. A “plain English” requirement would be very helpful.¹⁷

4. Technological Tools

We believe that the Commission can make use of technology in applying new consumer information requirements. Indeed, we endorse the notion that websites can be used to compare the costs of various calling plans and broadband service offerings.¹⁸ Again, the Commission can develop the specifics of the most helpful comparisons for each service and the comparisons can be posted on a separate website designed for that purpose with links from the websites of the Commission, state commissions and service providers. We also suggest that the FCC website contain instructions, as do many state websites, on how to file a complaint and how to seek resolution of disputes. As more consumers become accustomed to finding answers to their questions first on the Internet, this form of access will become ever more useful.¹⁹

III. CONCLUSION

In these Comments, the District of Columbia Public Service Commission has recommended that the FCC consider the establishment of a Federal/State Joint Task Force on Consumer Protection that will leverage the considerable expertise of state utility commissions. This was an idea originally proposed by NARUC in 2008 that may be


¹⁷ A “plain Spanish” version would also be helpful.

¹⁸ See *Notice* at n. 76.

¹⁹ The DC PSC website has such a form. See www.dcpsc.org/consumerservices/uccmi/uccmi.shtm

helpful to the Commission in determining whether additional consumer information and truth-in-billing requirements should be adopted.

**Respectfully submitted,
District of Columbia Public Service Commission**

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October 13, 2009

Resolution Concerning the Communications Policy Statement

WHEREAS, Convergence of technologies and the deployment of national networks offering packages of landline and wireless voice, video, and broadband services have blurred traditional jurisdictional boundaries between federal and State regulation of telecommunications services; *and*

WHEREAS, According to the Pew Internet & American Life Project Survey, dated December 2007, 87% of Americans have wireless phones, while the Centers for Disease Control and Prevention National Center for Health Statistics' "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2007" report states that nearly one out of every six American homes (15.8%) had only wireless telephones during the second half of 2007, and more than one out of eight American homes (13.1%) received all or almost all calls on wireless telephones despite having a landline telephone in the house; *and*

WHEREAS, In February 2005, NARUC passed a resolution stating that any revisions to the Telecommunications Act should, among other things: (1) consider the relative interests and abilities of the State and federal governments when assigning regulatory functions; (2) preserve the States' particular abilities to ensure their core public interests in consumer protection; (3) ensure timely resolution of policy issues important to consumers and the market; (4) focus regulation only on those markets where States identify market failure; *and*

WHEREAS, In the past, NARUC has supported a national framework for wireless consumer standards as a minimum, with the States free to impose further regulations; and NARUC has opposed national preemption regarding the terms and conditions of wireless telecommunications services, to safeguard a State commission's oversight of wireless carriers that hold Eligible Telecommunications Carrier (ETC) status, and a State commission's desire to resolve wireless consumer complaints using its expertise in consumer protection, public safety, fact-based arbitration and adjudication, and physical proximity to the consumer; *and*

WHEREAS, Pursuant to Section 214(e) of the Communications Act, wireless carriers, according to a June 2008 GAO report, have successfully petitioned 40 State commissions to receive federal subsidies from the high-cost fund to serve rural areas, which are estimated to be \$1.2 billion in total, and have accepted State jurisdiction over certain terms and conditions for such ETC certification and annual or periodic review as a condition of receiving those subsidies; *and*

WHEREAS, Today, according to a new survey conducted by the State utility commissions of California and the District of Columbia of 50 States, the District of Columbia, Guam, and Puerto Rico, 35 State utility commissions have no regulatory authority, and of the 18 jurisdictions who do have such authority, only nine are actively engaged at present in such regulation over the terms and conditions of wireless voice communications; *and*

WHEREAS, State utility commissions have proven to be valuable partners to the Federal Communications Commission (FCC) as the "laboratories of democracy" for ensuring consumer rights in a timely manner; *and*

WHEREAS, States have successfully enforced the FCC's national policies on a consistent and fair manner, such as in the area of slamming and cramming, and have encouraged new services (e.g. Statewide video franchise authority) and have met public policy challenges, such as universal broadband availability; *and*

WHEREAS, Uniform national standards coupled with a State and federal enforcement partnership would give consumers throughout the nation a clear and consistent set of consumer rights that they may not have today, particularly the consumers in those States that do not regulate terms and conditions of wireless service; however, should such a State receive the authority or determine to exercise its authority in the future, it would be able to take advantage of the uniform standards and State enforcement scheme as described herein; *now, therefore, be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 2008 Summer Meetings in Portland, Oregon, supports efforts to encourage mutually agreed upon, uniform national wireless consumer protection standards coupled with an effective partnership of State and federal enforcement; *and be it further*

RESOLVED, That NARUC recommends the formation of a Joint Task Force or Working Group (hereinafter "joint task force") that includes three FCC Commissioners, five State commissioners, an industry representative, a representative of the State Attorneys General, and a consumer advocate to engage in a collaborative process (including public comments and reply comments to ensure the transparency of the process) to mutually agree upon set of uniform national wireless consumer protection standards, *and be it further*

RESOLVED, That the joint task force would hold public meetings, except for deliberative sessions, and would continue to meet at least every six months after the initial standards are adopted to review any proposals for changes as deemed necessary; such meetings could be held sooner at the option of the chair of the joint task force or by request of the majority of the joint task force; *and be it further*

RESOLVED, That should changes to the standards be adopted by the joint task force after the initial standards are approved, the changes shall be approved using the same collaborative process outlined in this resolution; *and be it further*

RESOLVED, That the mutually agreed upon uniform national wireless consumer standards would be completed within six months of the formation of the joint task force and then submitted to the FCC for approval; but Congress shall determine that if no action was taken by the FCC by the end of the 120 day period from the date of submission, the uniform national consumer protection standards would be deemed to be approved and adopted by the FCC. In addition, should any such standards and recommendations or revisions affect Sections 214(e) or 332(c), such revisions shall be submitted to the relevant committees of jurisdiction of the House of Representatives and Senate for their review and consideration, recognizing that ultimate authority for these issues resides with the Congress; *and be it further*

RESOLVED, That under this new partnership, the State commissions shall retain co-extensive authority to: (1) resolve consumer complaints in their States; (2) enforce the uniform national wireless consumer protection standards; and (3) conduct fact-based investigations relating to subject matters covered by such national consumer protection standards, similar to the way slamming and cramming matters are now handled; (4) utilize existing laws and administrative procedures authorized by the State to enforce any provisions included in a uniform national standard, either pursuant to State law or delegated authority under federal law; and (5) impose a penalty to enforce compliance with such standards or a violation of State law pursuant to a civil action or an administrative procedure authorized by the State, including higher fines or more punitive civil or criminal remedies, including injunctive relief; *and be it further*

RESOLVED, That in conjunction with the State and federal cooperative model, States will retain the ability to exercise explicit authority, including but not limited to, enforce laws of general applicability, collection and payment of State taxes, interconnection requirements, State universal service programs, public safety/E911 requirements, ETC designations; *and be it further*

RESOLVED, That NARUC authorizes and directs the staff and General Counsel to promote, with the Federal Communications Commission, Congress, and other policymakers at the federal level, policies consistent with this statement.

*Sponsored by the Committees on Telecommunications and Consumer Affairs
Adopted by the Board of Directors, July 23, 2008*